

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MALIK SCOTT,

Petitioner,

-against-

**ORDER**

03-CV-6383

SUPERINTENDENT,  
Mid-Orange Correctional Facility,  
Respondent.

-----X  
DEARIE, District Judge.

In a Report and Recommendation dated July 19, 2006, Magistrate Judge Lois Bloom recommended that this Court deny petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner, pro se, filed objections. The Court has considered the petition and the objections de novo.

Petitioner objects to the Report and Recommendation on several grounds. First, he contends that his defective indictment claim was misconstrued as a claim based on the Fifth Amendment right to a grand jury indictment. As Magistrate Judge Bloom notes, the petition does not clearly set forth the claim that the indictment was jurisdictionally defective. Nevertheless, the Report addresses any potential Fifth Amendment grand jury claim as well petitioner's claim that his due process rights were violated by the allegedly defective indictment.

Petitioner also reiterates his claim that prosecutorial misconduct induced his plea rendering it involuntary. The Court agrees with Magistrate Judge Bloom's conclusion that petitioner has failed "to establish that the prosecutor's description of the surveillance tape was deliberately misleading or untrue." (Report at 11.) Finally, petitioner contends that the factual record underlying his ineffective assistance of counsel claim is incomplete. Beyond objecting to

Magistrate Judge Bloom's rendition of the facts surrounding petitioner's apprehension and the disclosure of a security camera tape based on testimony at the Dunaway hearing, petitioner does not indicate how his claim of ineffective assistance of counsel would benefit from further development of the record.

The Court adopts Magistrate Judge Bloom's Report and Recommendation without qualification. Petitioner's application for a writ of habeas corpus is denied, and the petition is dismissed. Because petitioner has not "made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), a certificate of appealability shall not issue. In addition, this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith. Coppedge v. United States, 369 U.S. 438 (1962). The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York  
October 20, 2006

s/ Judge Raymond J. Dearie

  
RAYMOND J. DEARIE  
United States District Judge